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In the

# Supreme Court of the United States

October Term, 1966

No. 391

STATE FARM FIRE AND CASUALTY COMPANY and GREYHOUND LINES, INC.,
*Petitioners,*

vs.

KATHERINE TASHIRE, EVA SMITH, HARRY SMITH, LILLIAN G. FISHER, BARBARA McGALLIAND, DORIS ROGERS, GAIL R. GREGG, RICHARD L. WALTON, heir of SUE WALTON, and DONALD WOOD,
*Respondents.*

# PETITIONERS' BRIEF

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# PETITIONERS' BRIEF

## OPINION BELOW

The District Court did not issue an opinion. The opinion of the Court of Appeals (R 168) is reported at 363 F2d 7.

## JURISDICTION

The judgment of the Court of Appeals was entered on June 30, 1966 (R 173). Petitioners did not petition for rehearing. Their petition for a writ of certiorari was filed July 28, 1966 and was granted October 10, 1966 (R 174). The jurisdiction of this Court is invoked under 28 USC § 1254(1).

## STATUTE AND RULE INVOLVED

The statute involved is c. 646, 62 Stat. 931, 28 USC § 1335 (the Federal Interpleader Act), printed in Appendix A, infra 43.

The federal rule involved is Rule 22 of the Federal Rules of Civil Procedure, printed in Appendix B, infra 45.

## QUESTIONS PRESENTED

1. Whether the District Court had jurisdiction under 28 USC § 1335 (the Federal Interpleader Act) over the subject matter of a casualty insurer's action to determine its insured's liability for unliquidated claims, far exceeding the policy limits, of persons of diverse citizenship arising out of a multiple-claim catastrophe, and the claimants' respective rights to the proceeds of the policy.

2. Whether the District Court had jurisdiction over the subject matter of the action under Rule 22 (1) of the Federal Rules of Civil Procedure, there being diversity of citizenship between the insurer and all defendants.

## STATEMENT

### 1. The Nature of the Action

This is an action in the nature of interpleader filed on January 22, 1965 by petitioner State Farm Fire and

Casualty Company, an Illinois corporation doing business in Oregon and having its principal place of business in Illinois. In its complaint, State Farm sought a determination that it was not liable under the terms of a policy issued in Oregon to extend coverage to its named insured, a citizen of Oregon who was driving a pickup truck which collided with a Greyhound bus near Redding, California on September 19, 1964. Alternatively, it sought an adjudication of defendants' claims against its insured for injuries, deaths and property damage resulting from the accident in amounts far exceeding the policy limits of $20,000, which sum was deposited conditionally with the Clerk of the Court. Joined as defendants were the insured driver and the owner of the pickup truck, the bus company (petitioner Greyhound Lines, Inc.) and its driver, and the 35 bus passengers (or their survivors). The defendant bus driver and passengers were alleged to have been or to have claimed to be injured in the accident. Two of the defendants were alleged to be survivors of persons whose deaths may have resulted from the accident.

The complaint alleged that the defendants were citizens of Oregon, California, Washington, South Dakota, Montana and Canada. Consequently, there was diversity of citizenship between State Farm and all of the defendants and among the defendants themselves.

The jurisdiction of the District Court was invoked under 28 USC § 1335 (the Federal Interpleader Act) and § 1332 (diversity of citizenship) (R 1-6).

**2. The Interpleader Allegations of the Complaint**

The complaint alleged:

a. State Farm believed there was neither coverage nor any duty to defend the driver, because the pickup truck was being used in the business of its owner at the time of the accident (R 5);

b. At least four actions for damages totaling more than $1,110,000 had been filed against the driver and others in California state courts, and many other claims had been asserted against the driver and other lawsuits threatened (R 4);

c. State Farm was not authorized to admit the driver's liability for the accident (R 5);

d. The amount of liability for injuries and deaths in the accident, if established against an insured, would substantially exceed the policy limits (R 5); and

e. If the court should determine that there was coverage, State Farm would relinquish its claim to the fund created by its deposit to the extent necessary to satisfy defendants' claims (R 5).

### 3. The Prayer for Relief

State Farm prayed for a decree adjudicating that it need not extend coverage to the driver; in the alternative, it sought an order of interpleader determining that the appropriate defendants were adverse claimants to the fund and ordering those claiming injury or damage to interplead and establish their claims. It also prayed for an adjudication that its deposit of the policy limits discharged its responsibilities under the policy, including the obligation to defend pending and future actions, and for an injunction restraining all parties from instituting or prosecuting any other proceedings in any other court against State Farm or the driver (R 5-6).

### 4. Proceedings in the District Court

An order was entered on January 22, 1965 requiring defendants to show cause why they should not be restrained from instituting or prosecuting suits in state or federal courts affecting the property or obligation involved in the action, and specifically suits against State Farm and its named insured (R 14).

On May 3, 1965 an order was entered under 28 USC § 2361 temporarily restraining the defendants (except one Gladys Hart, who had not yet been served) from instituting or prosecuting proceedings in any state or federal court affecting the property or obligation involved

in the action and specifically proceedings against plaintiff or defendants who might constitute its insureds (R 112-113).

On May 17 and 21, 1965 the defendants who are respondents in this Court moved for an order dissolving the restraining order and dismissing the action on the ground that the court lacked "jurisdiction of the parties" (R 146-147).[1] Their motions were denied on June 1, 1965 (R 149-150). Interlocutory appeals were taken from that order on June 30, 1965 (R 150-151; 152). The Court of Appeals had jurisdiction under 28 USC § 1292.

**5. Proceedings in the Court of Appeals**

The Court of Appeals did not reach and did not decide the question of personal jurisdiction which was the only subject of the appeal. In its opinion of June 30, 1966, it held, on its own motion,[2] that the District Court lacked jurisdiction over the subject matter of the complaint; that persons having unliquidated tort claims against the insured driver for more than the policy limits arising out of the accident were not "adverse claimants" to benefits of the policy under 28 USC § 1335(a)-(1) or "persons having claims" against the insurer under Rule 22(1) FRCP, because they could not, under

1. The Canadian defendants had been served by registered mail (R 73-86), which respondents contended was insufficient.

2. See 1 Moore's Federal Practice (2d Ed 1964) 609-611 (¶ 0.60).

the terms of the policy and the law of California and Oregon, sue the insurer before reducing their claims to judgment (R 168-172). It reversed the order appealed from, with instructions to dismiss the action for lack of jurisdiction over the subject matter (R 173).

Petitioners petitioned for certiorari, citing the contradictory decision of the Eighth Circuit in *Underwriters at Lloyd's v. Nichols*, (CA 8 1966) 363 F2d 357. The petition was granted on October 10, 1966 (R 174).[3]

## SUMMARY OF ARGUMENT

1. The question to be decided is whether, in the absence of a local direct action statute, a liability insurer can proceed in federal court to interplead persons whose unliquidated tort claims against its insured arising out of a single disaster far exceed the policy limits. Under modern conditions the question is of increasing importance, since serious problems arise when, as frequently happens, persons from various states having unliquidated claims for death and injuries look for satisfaction

3. On February 12, 1965 petitioner Greyhound Lines, Inc. moved to dissolve the order to show cause and dismiss the action for lack of jurisdiction (R 95-96). However, actions were commenced against Greyhound in California, Oregon and Washington for injuries arising out of the accident, and more were threatened (R 104-105). It became apparent that this action would provide a convenient proceeding in which to resolve some or all of the claims against Greyhound. Consequently, Greyhound withdrew its motion (R 98), and on March 25, 1965 it filed an answer and cross claim against its co-defendants seeking a determination that it was not responsible for the accident (R 101-106). It joined State Farm in resisting respondents' appeal to the Court of Appeals.

to the limited proceeds of a single liability insurance policy.

2. The history of federal interpleader is one of expanding jurisdiction for the protection of parties to important classes of interstate controversies. Each of the successive statutes has enlarged the interpleader jurisdiction of federal courts to meet the needs of a modern industrial nation; the historic boundaries of equitable interpleader as well as limitations contained in the statutes of 1917 and 1926 have been eliminated in subsequent legislation, culminating in the Act of 1948.

a. The Act of 1917 included within the term "adverse claimants" all those who "are claiming or may claim" the policy proceeds. Because there was congressional objection to permitting interpleader jurisdiction in cases where there was only "the possibility of claims" by two or more persons, the phrase "may claim" was dropped from the law by the 1925 amendments and the 1926 Act. It was restored in 1948, after two federal courts had declined to exercise interpleader jurisdiction over persons holding unliquidated tort claims, one on the precise ground that the words "may claim" had been deleted from the law in 1925. The restoration of the "may claim" phrase in 1948 restored the broader base of the 1917 Act and clearly embraces the present action.

**b.** Interpleader under Rule 22, Federal Rules of Civil Procedure, is of equal or broader scope, since it permits the free joinder of competing claims in the alternative, irrespective of the restrictions of former equity practice. It permits the joinder of all claims by which the plaintiff is or "may be" exposed to multiple liability, which clearly includes the case of the casualty insurer who is faced with unliquidated claims in excess of the policy limits.

**c.** Interpleader jurisdiction under Rule 22 was sustained in *Underwriters at Lloyd's v. Nichols*, supra, (CA 8 1966) 363 F2d 357, and the considerations of law and policy which support that decision are of controlling weight. The effectiveness of interpleader to protect important interests of the claimants, the insured, the insurer and the courts make the jurisdiction desirable, and the terms of the Act and the rule and their history make the presence or absence of a direct action statute irrelevant to the question of jurisdiction. Indeed, the dangers to the parties and the resulting need for interpleader are accentuated by the fact that the claims have not been reduced to judgment. The Act should not be given a narrow construction to exclude cases to which it fairly applies.

**3.** The decision of the court below was an incorrect construction of the Act and of Rule 22, because it makes

the availability of federal interpleader jurisdiction one which varies from state to state depending upon the presence of local direct action statutes. The Interpleader Act and the diversity jurisdiction which makes Rule 22 applicable are nationwide in their operation and were intended to be uniform in their application, unaffected by local law.

**4.** The recognition of interpleader jurisdiction in this case is responsive to a critical need for relief. It secures for the claimants a uniform determination of their respective claims and a fair proration of the policy proceeds. It protects the insured against disproportionate settlements and promotes general settlements which will protect him from excess judgments. It protects the insurer from multiple litigation and the hazard of multiple liability growing out of uncertain and conflicting obligations to the insured and the claimants. It protects the courts from the burden of multiple litigation and the risk of conflicting decisions of common questions of fact and law.

**5.** The recognition of interpleader jurisdiction in this case does not invade any interest of the tort claimants. The personal injury suits can be tried by a jury as of right in the second stage of the proceeding, and the statutory limitations on venue and provisions for transfer prevent unreasonable inconvenience to the parties.

**6.** The district court had jurisdiction to enjoin the prosecution of conflicting claims against the insurer or the insured in other courts, and its exercise was essential to effective interpleader relief.

## ARGUMENT

### I.

### Introduction

This case involves 35 claims for personal injuries and death which arose out of a truck-bus collision, engulfing the limits of the $20,000 liability policy which State Farm had issued to the driver of the truck. The claimants are citizens of five different states and the Dominion of Canada. The action seeks to determine coverage and to interplead all claimants to establish their claims and prorate the policy proceeds among those who succeed in doing so.

The case presents no jurisdictional question concerning the citizenship of the parties. There is diversity of citizenship between State Farm and all defendants and among the defendants themselves.[4] The question is whether, in the absence of a local direct action statute, a liability insurer can interplead persons whose unliquidated tort claims against its insured arising out of a single disaster far exceed the policy limits. The under-

4. supra, 3-4. See *Haynes v. Felder*, (CA 5 1957) 239 F2d 868.

lying questions are whether such actions improperly encroach upon the trial of individual personal injury suits in state courts, or whether the assumption of federal jurisdiction is not justified and necessary because separate proceedings in state court prejudice the interests of citizens of different states.

The question is important, not only because modern society is characterized by complex activities having the capacity to cause injury and death to hundreds or thousands of people,[5] but also because relatively common occurrences, such as the automobile accident involved in this case, frequently involve the interests of persons who are citizens of several states. In the common case where persons having injury and death claims are destined to look for satisfaction to the limited proceeds of a liability insurance policy, serious problems face them and the parties to the policy if the claims must be tried separately in different courts applying diverse rules and standards.

> "Joinder in a single suit is especially desirable when the multitude are seeking to divide a fund or a limited liability. Here the usual disadvantages of multiplicity of suits are greatly aggravated. The objection to many separate suits is not merely the vexation and expense to the adversary of trying the same question over and over. In addition there is danger

5. E.g., the explosion at the Indiana State Fair Grounds in Indianapolis which was involved in *Commercial Union Insurance Co. of New York v. Adams*, (DC SD Ind 1964) 231 F Supp 860 at 861:

> "* * * [M]ore than seventy persons were killed and some three hundred or more injured, many severely, * * *"

that the aggregate of the separate jury verdicts might exceed the limit of liability, and also it is impossible to make a fair distribution of the fund or limited liability to all members of the multitude except in a single proceeding where the claim of each can be adjudicated with due reference to the claims of the rest. The fund or limited liability is like a mince pie, which can not be satisfactorily divided until the carver counts the number of persons at the table. * * *" Chafee: *Bills of Peace with Multiple Parties*, 45 Harv L Rev 1297 at 1311 (1932)

## II.

**The history of the Federal Interpleader Act and its relationship to Rule 22 FRCP establish that the District Court had jurisdiction over the subject matter of the action.**

### a. The Interpleader Acts.[6]

Since the first Interpleader Act was enacted in 1917,[7] statutory interpleader in federal courts has developed into a broad and effective remedy for the protection of the parties to important classes of interstate controversies. The 1917 and 1926 statutes were of limited scope (except for the availability of extraterritorial service);[8] however, the historic limitations of equitable

6. Material parts of the 1917, 1925, 1926 and 1936 statutes are set forth in Appendix C, infra 46-50. See generally 3 Moore's Federal Practice (2d Ed 1964) 3014-3018 (¶ 22.06); Chafee, *The Federal Interpleader Act of 1936: I, II*, 45 Yale L J 963, 1161 (1936); Anno: 106 ALR 626 (1937); *Underwriters at Lloyd's v. Nichols*, supra, (CA 8 1966) 363 F2d 357.

7. c 113, 30 Stat 929, infra 46.

8. *Sanders v. Fertilizer Works*, (1934) 292 US 190 at 199-200.

interpleader which survived them[9] have been progressively eliminated by subsequent legislation. The modern statutory action is almost wholly free from those limitations,[10] as well as the territorial restrictions on jurisdiction which otherwise inhere in a federal system. The right to relief under the statute is absolute if the statutory elements are shown to exist.[11]

The Interpleader Act of 1917 was the response of Congress[12] to *New York L. Ins. Co. v. Dunlevy*, (1916) 241 US 518 in which the Court held that an interpleader judgment adjudicating the claims of rival claimants to the benefits of an insurance policy who resided in different states was not entitled to full faith and credit in the absence of personal jurisdiction over the claimants. In *Dunlevy*, the insurer had to pay the policy benefits twice, since the interpleader adjudication of the Pennsylvania state court did not protect it against a later decision in favor of a non-resident claimant who had stayed out of the interpleader proceeding.[13]

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9. Described in *Klaber v. Maryland Casualty Co.*, (CCA 8 1934) 69 F2d 934 at 936-937. See also 4 Pomeroy's Equity Jurisprudence, (5th Ed 1941) 906 (§ 1322); 3 Moore's Federal Practice (2d Ed 1964) 3005-3006 (¶ 22.03).

10. 2 Barron and Holtzoff, Federal Practice and Procedure (Rules Ed 1961) 230-233 (§ 551).

11. *Railway Express Agency v. Jones*, (CCA 7 1939) 106 F2d 341 at 344; *Maryland Casualty Co. v. Glassell-Taylor & Robinson*, (CCA 5 1946) 156 F2d 519 at 524-525; *American-Hawaiian Steamship Co. v. Bowring & Co.*, (DC SD NY 1957) 150 F Supp 449 at 453.

12. 3 Moore's Federal Practice (2d Ed 1964) 3016 (¶ 22.06); Chafee, *Interstate Interpleader*, 33 Yale L J 685 at 722-723 (1924).

13. While a deposit of "property" into court will sustain *in rem* jurisdiction, *Dunlevy* held that depositing the amount of a contract debt does not change a personal claim into one *in rem*. See 3 Moore's Federal Practice (2d Ed 1964) 3015-3016 (¶ 22.06).

*Dunlevy* has been criticized and distinguished,[14] and it was sought to be remedied by the Act of 1917, which allowed extraterritorial service in interpleader cases brought by insurance companies and fraternal benefit societies. Although equity practice continued to apply to actions under the Act,[15] the statute contained a broad and important provision: In statutory actions, "adverse claimants" who might be interpleaded included all persons who "are claiming or may claim" an interest in the proceeds of the policy.

The Act also contained special limitations. Only insurance companies and fraternal societies could utilize its provisions; the amount of the insurance had to be deposited in court; the statute did not authorize injunctive relief against the prosecution of competing claims to the proceeds in other courts; and it did not extend to actions in the nature of interpleader.

Under the 1925 amendments (c 317, 43 Stat 976) and the 1926 Act (c 273, 44 Stat 416),[16] casualty and surety companies were allowed to bring the statutory action, and the federal courts were given authority to enjoin other proceedings. However, in order to secure

14. Chafee, *Interstate Interpleader*, 33 Yale L J 685 at 711-715 (1924).

15. The 1917 and 1926 Acts "did not change the remedy, but enlarged the jurisdiction." *Klaber v. Maryland Casualty Co.*, supra, (CCA 8 1934) 69 F2d 934 at 937; 3 Moore's Federal Practice (2d Ed 1964) 3016 (¶ 22.06).

16. Amendments to the 1917 Act were adopted in 1925, and a new Act was substituted in 1926. Material parts of both are set forth in Appendix C, infra, 47-48. The charges are summarized in 3 Moore's Federal Practice (2d Ed 1964) 3017 (¶ 22.06).

passage of this liberalization of statutory interpleader, the "may claim" clause was deleted.[17]

The 1936 Act (c 13, 49 Stat 1096) remedied defects in the existing law, and interpleader jurisdiction was again expanded.[18] The new Act extended the remedy to any "person, firm, corporation, association or society" and granted jurisdiction over bills in the nature of interpleader. It also allowed defensive interpleader.[19]

The 1948 Act (c 646, 62 Stat 931, 28 USC § 1335)[20] conformed the diversity of citizenship provisions of the Act to § 1332 and restored the "may claim" phrase which had been dropped in 1925.[21]

> "* * * this is an important change which reverts back to the broader base of the 1917 Act, * * *" 3 Moore's Federal Practice (2d Ed 1964) 3025 (¶ 22.08)

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17. "This change was made in order to secure the passage of the Act of 1926. Some of the members of the Senate subcommittee were not willing to permit the companies to obtain the jurisdiction of the District Court when there was only a possibility of claims by two or more persons." Chafee, *Interpleader in the United States Courts*, 41 Yale L J 1134 at 1163-1164 (1932)

See also *Klaber v. Maryland Casualty Co.*, supra, (CCA 8 1934) 69 F2d 934 at 938-939.

18. Material parts are set forth in Appendix C, infra 49.

19. See Chafee, *The Federal Interpleader Act of 1936: I, II*, 45 Yale L J 963 at 966-969, 1161 (1936). Chafee believed that the present action would lie under the 1936 Act as one in the nature of interpleader (45 Yale L J at 1165-1167).

20. Material parts are set forth in Appendix A, infra 43.

21. 3 Moore's Federal Practice (2d Ed 1964) 3018 (¶ 22.06). The statutory history shows that the terms of the new Judicial Code were the product of painstaking care by the most distinguished men in the field. Hearings of House Subcommittee No. 1 on the Judiciary (80th Congress) on H.R. 1600 and 2055 (1947) at 18-19; Hearings of Senate Subcommittee on the Judiciary (80th Congress) on H.R. 3214 (1948) at 14-17, 21-23.

The 1948 Act did not merely restore the original concept of "adverse claimants" to the law; that concept became applicable throughout the greatly expanded range of interpleader jurisdiction established by the intervening legislation. The Court cannot assume that Congress in adopting the 1948 Act was unaware of the history of this statutory language,[22] particularly in view of the extended consideration which its omission from the 1926 and 1936 Acts had received in the literature and in decisions which considered the question now before the Court, infra 19-20.

The Acts did not occupy the entire field of interpleader, and the general equity jurisdiction of the courts to grant such relief remained in cases having other jurisdictional bases.[23] In such cases, interpleader is available under Rule 22, Federal Rules of Civil Procedure,[24] which permits the joinder of all persons having claims against the plaintiff by which he is or may be exposed to multiple liability. Rule 22 is one of several devices of the Federal Rules designed to permit the free

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22. See *Shamrock Oil Corp. v. Sheets*, (1941) 313 US 100 at 106-107.

23. *Security Trust & Savings Bank of San Diego v. Walsh*, (CCA 9 1937) 91 F2d 481 at 483. In *Texas v. Florida*, (1939) 306 US 398 at 407-408 the Court held that a bill in the nature of interpleader presents a "case" or "controversy" within Article III of the Federal Constitution.

24. Rule 22 (which is set forth in Appendix B, infra 45) expressly abandons the requirements of former equity practice. The Advisory Committee Notes of 1937 state that Rule 22 provides relief "along the newer and more liberal lines of joinder in the alternative."

"Paragraph (1) of Rule 22 provides the most modern and liberal method of obtaining interpleader to be found. * * *" 3 Moore's Federal Practice 3007 (2d Ed 1964) (¶ 22.04)

joinder of parties and claims.[25] It permits the joinder of competing claims in the alternative to secure a binding declaration of the plaintiff's liability to all of the claimants. The rule is *in pari materia* with the statute;[26] in proceedings under it "All the technical restrictions which grew up around bills of interpleader and bills in the nature of interpleader * * * have been entirely jettisoned."[27] It extends nonstatutory interpleader to any case in which claims are asserted against the plaintiff by which he "may be" exposed to multiple liability; the "possibility" of such liability (which unquestionably exists in the case of the casualty insurer faced with excess claims) is sufficient to invoke it.[28]

In summary, the history of federal interpleader is one of expanding jurisdiction for the protection of persons who are threatened with multiple litigation and the hazards of multiple liability by reason of their involvement in controversies having interstate elements.

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25. See Rule 14 (third party practice), Rule 18 (joinder of claims), Rules 19 and 20 (joinder of parties), Rule 23 (class actions), Rule 24 (intervention), Rule 22(2) provides that the rules are applicable to proceedings under the Interpleader Act.

26. *Underwriters at Lloyd's v. Nichols*, supra, (CA 8 1966) 363 F2d 357 at 361.

27. 3 Moore's Federal Practice (2d Ed 1964) 3007-3008 (¶ 22.04).

28. See *Pan American Fire & Casualty Company v. Revere*, (DC ED La 1960) 188 F Supp 474 at 480:

> "* * * The key to the clause requiring exposure to 'double or multiple liability' is in the words 'may be.' The danger need not be immediate; any possibility of having to pay more than is justly due, no matter how improbable or remote, will suffice. At least, it is settled that an insurer with limited contractual liability who faces claims in excess of his policy limits is 'exposed' within the intendment of Rule 22, and we need go no further to find the requirement satisfied here."

See also *Standard Surety & Casualty Co. v. Baker*, (CCA 8 1939) 105 F2d 578 at 581-582, quoted infra 30.

It has grown because it is responsive to problems beyond the remedial powers of state courts which arise with increasing frequency in a complex society.

> "Both the statute and the rule are intended to prevent multiplicity of actions and circuity of litigation, thus protecting the stakeholder, and, by requiring all interested persons to come in and set up their claims in one case, to avoid the undue advantage that might otherwise be obtained by the creditor first obtaining judgment."[29]

The congressional purpose for 50 years has been to adapt and expand interpleader jurisdiction into a modern and effective tool to achieve these purposes, without artificial and irrelevant limitations. The present case, beyond the slightest question, falls within that purpose.

**b. The cases under the Interpleader Acts and Rule 22, Federal Rules of Civil Procedure.**

The only reported case prior to 1936 which considered the applicability of federal statutory interpleader to unliquidated tort claims exceeding a limited insurance fund was *Klaber v. Maryland Casualty Co.*, supra, (CCA 8 1934) 69 F2d 934, which held that the 1926 Act did not grant jurisdiction as to claims which had not been reduced to judgment and could not support a direct action against the insurer, because the phrase "may

29. 2 Barron and Holtzoff, Federal Practice and Procedure (Rules Ed 1961) 227 (§ 551).

claim" had been deleted by the 1926 act.[30] Under the 1936 Act jurisdiction was denied, on the authority of *Klaber*, in *American Indemnity Co. v. Hale*, (DC WD Mo 1947) 71 F Supp 529 at 533-534. More recently, jurisdiction under Rule 22 has been denied by an Arkansas District Court in *Underwriters at Lloyd's v. Nichols*, (DC ED Ark 1966) 250 F Supp 837, rev'd (CA 8 1966) 363 F2d 357[31] and by an Ohio District Court in *National Casualty Co. v. Insurance Co. of North America*, (DC ND Ohio 1946) 230 F Supp 617. The cases since *Klaber* are ultimately based on a single ground: irrespective of statutory changes and the adoption of Rule 22, interpleading claimants with unliquidated tort claims under the Act (as in *Hale*) or Rule 22 (as in *Nichols* and *National Casualty Co.*) improperly interferes with the jurisdiction of the state courts.[32]

Contradictory decisions sustaining jurisdiction under Rule 22 have been rendered by Judge Skelly Wright in *Pan American Fire & Casualty Company v. Revere*,

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30. It is the fair implication of *Klaber* that if this language had been retained in the 1926 Act, the decision would have been different. The court also held (at 939) that the suit must fail because the company was not a "disinterested stakeholder." The 1936 Act, as we have shown, supra 16, includes bills in the nature of interpleader.

31. Even though Judge Henley recognized that the law had changed since *Klaber* and *Hale* (at 839). Professor Moore says of the 1948 Act:

> "* * * the only other change is in the addition of the 'may claim' clause. But this is an important change, which reverts back to the broader base of the 1917 Act, and certainly eliminates the second ground for dismissal relied on by the *Klaber* case, which construed the 1926 Act that did not contain the 'may claim' clause." 3 Moore's Federal Practice (2d Ed 1964) 3025 (¶22.08)

32. *Hale* (at 532-533), *Nichols* (at 840), *National Casualty* (at 620-621).

supra, (DC ED La 1960) 188 F Supp 474 and by Chief Judge Vogel in *Underwriters at Lloyd's v. Nichols*, supra, (CA 8 1966) 363 F2d 357. Jurisdiction under the 1948 Act was sustained by Judge Dillin in *Commercial Union Insurance Co. of New York v. Adams*, supra, (DC SD Ind 1964) 231 F Supp 860. The carefully written opinions in *Pan American* and *Nichols* show convincingly that *Hale* is inconsistent with the language and the history of the statute (especially the "may claim" phrase) and the rule[33] and is wholly inconsistent with the basic purposes of both.

The reasoning and principles which support these decisions are of controlling weight in the present case. It is not denied that actual judgments against the insured in excess of the policy limits will support interpleader jurisdiction, and in such cases the courts have extended their authority beyond considerations of priority in time in order to prorate the fund fairly.[34] Consequently, the question is not whether cases generally within the jurisdiction of the state courts should be transferred to federal courts; it is whether any meaningful limitation on a jurisdiction which is otherwise not questioned can be found in the fact that under local

33. In both, jurisdiction was based on Rule 22, but the opinions and their reasoning are equally applicable to cases under the Interpleader Act. The history of the "may claim" phrase and the importance of its inclusion in the 1948 Act is also discussed in *A/S Kredit Bank v. Chase Manhattan Bank*, (DC SD NY 1957) 155 F Supp 30 at 34, aff'd (CA 2 1962) 303 F2d 648.

34. *Burchfield v. Bevans*, (CA 10 1957) 242 F2d 239 at 242-243; *Montgomery Ward & Co. v. Fidelity & Deposit Co.*, (CCA 7 1947) 162 F2d 264 at 268.

law an insurer cannot be sued until tort claims against its insured are reduced to judgment. We suggest that there is none. That claims are unliquidated is an excuse, not a reason, for rejecting jurisdiction.

The "intrusion" on state court jurisdiction which will follow if interpleader jurisdiction is recognized in this case is a feature of nearly all cases under the Act and the rule. The need for federal interpleader jurisdiction was recognized nearly 50 years ago, and its scope has repeatedly been extended, because the jurisdictional limitations of state courts and practice render them inadequate to meet the increased need for interstate interpleader relief.

Unliquidated and contingent (nonpresent) claims have regularly been brought before federal courts through the Interpleader Act and Rule 22, both before and since the 1948 amendments,[35] and the only distinction between those cases and this one which has been suggested is that direct actions lie on some surety bonds,[36] a circumstance which is patently not material

35. *Standard Surety & Casualty Co. v. Baker*, supra (CCA 8 1939) 105 F2d 578 (unliquidated claims against principal on surety bond); *Edner v. Massachusetts Mut. Life Ins. Co.*, (CCA 3 1943) 138 F2d 327 ("claimant" who lacked present claim to benefits of life insurance policy); *Pennsylvania Fire Ins. Co. v. American Airlines, Inc.*, (DC ED NY 1960) 180 F Supp 239 at 241-242; *Onyx Refining Co. v. Evans Production Corp.*, (DC ND Tex 1959) 182 F Supp 253 at 254-255; and see *F. H. McGraw & Co. v. Sherman Plastering Co.*, (DC Conn 1943) 60 F Supp 504 at 512-513, aff'd (CCA 2 1945) 149 F2d 301, cert den (1945) 326 US 753.

36. E.g., *American Indemnity Co. v. Hale, supra*, (DC WD Mo 1947) 71 F Supp 529 at 533-534.

to the problems of these parties or the purposes of the modern law. Indeed, the hazards faced by the insurer and the possibility of an unjust allocation of the policy proceeds among the claimants are, if anything, greater in tort cases, where the relative values of the unliquidated claims are necessarily indefinite and cannot be known or compared until they have been reduced to judgment. That indefiniteness, and the risks it creates, is neither cured nor affected by the circumstance that claimants can sue the insurer in states having direct action statutes.

The decision of the court below does not merely make the issue turn on an irrelevancy; it ignores the terms of the statute and the rule and the implications of their history. The language of the statute ("may claim")[37] and the rule ("may be exposed") sustains jurisdiction irrespective of any uncertainty about the claims which would have prevented relief under former practice, whether that uncertainty is as to their validity, their exact amount or their ultimate assertion against the vexed and threatened plaintiff. None of these contingencies is of primary importance over the others or prevents the injured person from being one

37. This language has been given substance by the cases. It has repeatedly been held under the 1948 Act that "the mere threat of future litigation" is a sufficient basis for statutory interpleader. *A/S Kredit Bank v. Chase Manhattan Bank*, supra, (DC SD NY 1957) 155 F Supp 30 at 33-34, aff'd (CA 2 1962) 303 F2d 648; see also *John Rosenblum, Inc. v. Gillespie*, (DC SD NY 1960) 187 F Supp 258 at 260.

who "may claim" an interest in the policy or whose claim "may" expose the carrier to multiple liability. The Act and the rule should be applied to all cases fairly within their terms, and their history and purpose are inconsistent with the view that restrictions should be implied or that they should be narrowly construed.[38]

## III.

**The decision of the court below destroys the uniform application of a grant of federal jurisdiction by making the availability of federal interpleader vary from state to state, depending upon the availability under local law of a direct action against the insurer.**

State law determines whether claimants can sue the insurer directly. *Brillhart v. Excess Ins. Co.*, (1942) 316 US 491 at 496. The court below held that the tort claimants could not be interpleaded to establish their claims against the insurance proceeds, because neither Oregon nor California law permits them to maintain direct actions against the insurer (R 170-172).

It is the result of the decision below that this import-

38. "The interpleader statute is liberally construed to protect the stakeholder from the expense of defending twice, as well as protect him from double liability. * * *" *New York Life Insurance Company v. Welch*, (CA DC 1961) 297 F2d 787 at 790
See also: *Sanders v. Fertilizer Works*, supra, (1934) 292 US 190 at 199; *Maryland Casualty Co. v. Glassell-Taylor & Robinson*, supra, (CCA 5 1946) 156 F2d 519 at 524; *Builders and Developers Corp. v. Manassas Iron & Steel Co.*, (DC ED Pa 1962) 208 F Supp 485 at 489; *Publicity Building Realty Corporation v. Hannegan*, (CCA 8 1943) 139 F2d 583 at 587-588; *John Hancock Mut. Life Ins. Co. v. Kegan*, (DC Md 1938) 22 F Supp 326 at 330.

ant grant of federal jurisdiction is not uniformly available, but instead depends upon the state of local law. By so holding, the court below disregarded the controlling principle that the scope and operation of statutes granting federal jurisdiction are not controlled by the vagaries of state law; such statutes are self-contained, so as to be of uniform application and availability. In *Shamrock Oil Corp. v. Sheets*, supra, (1941) 313 US 100 at 104, the Court said:

> "* * * The removal statute, which is nationwide in its operation, was intended to be uniform in its application, unaffected by local law definition or characterization of the subject matter to which it is to be applied. Hence the Act of Congress must be construed as setting up its own criteria, irrespective of local law, for determining in what instances suits are to be removed from the state to the federal courts. * * *"[39]

The construction of the Act and the rule which was adopted by the court below erroneously creates a special federal jurisdiction available to the citizens of some —but not all—of the states. It must be rejected.

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39. See also *Chicago, R. I. & P. R. Co. v. Stude*, (1954) 346 US 574 at 580; *Horton v. Liberty Mut. Ins. Co.*, (1961) 367 US 348 at 352-353; 1A Moore's Federal Practice (2d Ed 1965) 75-79 (¶ 0.157).

## IV.

**The recognition of interpleader jurisdiction in this case is responsive to a critical need for interpleader relief.**

Interpleader protects the vital interests of all interested persons:

### a. The claimants

The claimants, in the common case where the tort-feasor cannot respond to judgments in excess of the policy limits, are for practical purposes adverse to each other as well as the tort-feasor.[40] In the absence of effective procedures to marshall the policy proceeds, determine the claims and prorate the fund among those entitled to share in it, there must be either a race to judgment or settlements for disproportionate amounts which unfairly limit or defeat some of the claims. To achieve a fair distribution, the claims should be determined together under the same rules in a single proceeding, and the fund prorated among those who are entitled to share in it. Establishing the claims in interpleader permits them to be valued, not only with respect to the liability of the tort-feasor, but also with respect to

40. "Finally, it has been urged that the action is not proper because the claimants do not have claims adverse to each other. It might, by the same reasoning, be said that 100 persons adrift in the ocean with but one small lifeboat in sight were not adverse to each other. We fear, however, that the concept of non-adversity would dwindle in direct proportion to the number of swimmers reaching the boat. * * *" *Commercial Union Insurance Co. of New York v. Adams*, supra, (DC SD Ind 1964) 231 F Supp 860 at 863

See also *Standard Surety & Casualty Co. v. Baker*, supra, (CCA 8 1939) 105 F2d 578 at 582.

each other for the determination of their relative participation in the fund which is the limited source of compensation for all.

### b. The insured

The insured, if he has other assets or the hope of securing them in the future, is primarily interested in securing settlements of all of the claims, within the policy limits if possible, and the insurer is obliged under the implied obligations of its contract to seek this in good faith.[41] The haphazard trial of separate suits in the courts of different states prevents an orderly procedure to secure an overall settlement which will afford him the greatest measure of protection.

### c. The insurer

The insurer faces problems of two sorts: Initially, it is obliged to provide a defense for its insured in each of many lawsuits brought by people whose position with respect to the fund created by the policy usually involve an identical issue of liability. It is a primary purpose of interpleader to protect the stakeholder from multiple litigation as well as from multiple liability.[42]

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41. 7A Appleman, Insurance Law and Practice (1962 Ed) 551 (§ 4711); Anno: 40 ALR 2d 168 (1955); Keeton: *Liability Insurance and Responsibility for Settlement*, 67 Harv L Rev 1136 (1954).

42. *New York Life Insurance Company v. Welch*, (CA DC 1961) 297 F2d 787 at 790; *American-Hawaiian Steamship Co. v. Bowring & Co.*, supra, (DC SD NY 1957) 150 F Supp 449 at 455; *Metropolitan Life Ins. Co. v. Segaritis*, (DC ED Pa 1937) 20 F Supp 739 at 741.

Secondly, the difficulty of prorating the fund among claimants in the absence of interpleader makes the insurer's performance of its obligations to the insured difficult and hazardous. For the insurer is obligated to its insured to try in good faith to settle valid claims within the policy limits. Settlements with some which leave the insured exposed to judgments for others can raise a serious question about the insurer's good faith effort to protect him.[43]

The insurer may also come under duties to the claimants requiring proration of the policy proceeds and thereby become involved in conflicting obligations which expose it to a serious risk of excess liability. It is still usually held that the insurer can, within the indefinite and shifting limits of "good faith", make settlements which exhaust the policy proceeds at its discretion, without regard for the interests of other claimants.[44] However, this principle is under increasing attack; it is not of universal application, and the development by judicial or statutory rule of duties running to the claimants has been freely forecast. The result is a situation which makes the settlement of multiple claims hazardous in the absence of interpleader. Whether an

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43. That an insurer makes "over-eager" settlements with some of the claimants is evidence of bad faith toward the insured. *Brown v. United States Fidelity & Guaranty Co.*, (CA 2 1963) 314 F2d 675 at 681-682.

44. *Turk v. Goldberg*, (1920) 91 NJ Eq 283, 109 Atl 732; *Alford v. Textile Ins. Co.*, (1958) 248 NC 224, 103 SE 2d 8; *Liguori v. Allstate Insurance Company*, (1962) 76 NJ Super 204, 184 Atl 2d 12; Anno: 70 ALR 2d 416 (1960).

insurer can settle claims without regard to the interests of other known claimants is uncertain in most states; failing to prorate the proceeds may well be found to constitute "bad faith" in cases not now foreseen.[45]

In a given case, whether settlements which exhaust the policy limits will expose the insured to liability to the claimants or its insured; whether, if the insurer fails to settle for fear of such liability, it may be held to have breached its obligations anyway[46]—these are sufficiently serious problems in the absence of any interstate elements. However, when the courts and laws of several states become involved, the insurer's responsibilities will become a hopeless and hazardous tangle if the controversies cannot be consolidated in a single proceeding to determine the claims and prorate the policy proceeds.

The real and practical hazards which face the insurer in these cases are critical for the very reason that

45. The law is unsettled in most states, although prorating in certain cases is required by New York statute (§ 370, Vehicle & Traffic Law). That this justifies interpleader, see Keeton, *Preferential Settlement of Liability—Insurance Claims*, 70 Harv L Rev 27 at 43-44 (1956); see generally, Keeton, *Ancillary Rights of the Insured*, 13 Vanderbilt L Rev 837 at 844-845 (1960); 8 Appleman, Insurance Law and Practice (1962 Ed) 331-335 (§ 4892); Comment, 32 Chicago L Rev 337 (1965); *Underwriters at Lloyd's v. Nichols*, supra, (CA 8 1966) 363 F2d 357 at 359-360.

46. See *Kinder v. Western Pioneer Insurance Company*, (1965) 231 Cal App 2d 894, 42 Cal Rptr 394 at 399. Professor Keeton adds:

> "It might be suggested that excess liability could always be avoided by the company's acting in good faith and with reasonable care toward all concerned. But a realistic view of the minimum evidence required for proof of bad faith or negligence in excess-liability cases compels the conclusion that certainty is wanting in this escape route. * * *" 70 Harv L Rev 27 at 49 (1956)

ally available only in equity is irrelevent. * * *.

> * * * [T:]he court should decide whether to allow use of this joinder device. * * * But if the issues would be triable to a jury if they were litigated independently, they should be triable to a jury as a matter of right though Rule 22 or the Interpleader Act has been invoked. * * *"[55]

Recognition of interpleader jurisdiction over unliquidated tort claims which exceed the policy limits will not deprive the claimants of a jury trial.

**b. Choice of forum**

Under the venue provisions of 28 USC § 1397, infra 43-44, regulating actions under the Interpleader Act, the plaintiff cannot wholly disregard the convenience of the claimants: The action must be brought in a district in which one or more claimants reside. Furthermore, if an interpleader plaintiff has selected a forum which is inconvenient in the sense that a different forum would be more convenient for the parties, the District Court has authority under 28 USC § 1404(a)[56] to transfer the

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55. 2 Barron and Holtzoff, Federal Practice and Procedure (Rules Ed 1961) 250; see generally 247-251 (§ 556).

56. 28 USC § 1404(a):

> "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

action to any other court where it might have been brought.[57]

The venue question is of even less importance in diversity cases under Rule 22. While venue under 28 USC § 1391[58] can be laid at the residence of the plaintiff (or that of all of the defendants), there is no provision for out-of-state service, and this limitation will substantially eliminate proceedings in inconvenient forums unless a basis for an action *in rem* can be established. See 3 Moore's Federal Practice (2d Ed 1964) 3012-3013 (¶ 22.04).

It can be agreed that cases will arise in which there is no single forum which is manifestly close to all of the claimants. However, litigation, like people, is increasingly mobile, and the problem can easily be overstated. The substantial advantages to the claimants of combining their resources to establish liability in a single proceeding and the desirability of permitting interpleader for their protection as well as that of the other interested parties compels the conclusion that this inconvenience is not excessive. It exists in any case

57. *Mutual Life Ins. Co. of N.Y. v. Ginsburg*, (DC WD Pa 1954) 125 F Supp 920, app dism'd (CA 3 1956) 228 F2d 881, cert den (1956) 351 US 979, reh den (1956) 352 US 813, reh den (1957) 355 US 875; *Travelers Insurance Company v. Stuart*, (DC WD Ark 1964) 226 F Supp 557; *Fidelity and Casualty Company of New York v. Levic*, (DC WD Pa 1963) 222 F Supp 131.

58. 28 USC § 1391(a):

"A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside."

the claims have not been reduced to judgment. In *Standard Surety & Casualty Co. v. Baker*, supra, (CCA 8 1939) 105 F2d 578 at 581-582 the court accurately described the insurer's position as to unliquidated claims:

> "It may finally be determined that one or two only are entitled to recover, yet judgments might be procured on many of these claims simultaneously if defendants may proceed to the prosecution of their various suits. There might not be opportunity to plead by way of amendment or supplemental answer, the recovery of a prior judgment against plaintiff on the same bond. Again, courts might not permit such a defense because, perchance, the courts might hold that satisfaction and adjudication of liability alone would satisfy the requirements of the bond. After recovery of judgments, execution might issue on all, and plaintiff might find it impossible to set aside final judgments. Even if it be assumed that the first to recover judgments or to issue execution should first be paid until the liability on the bond was exhausted, subsequent claimants in order of recovery on judgment or issuing of execution might insist that the penalty should be apportioned (Thomas Laughlin Co. v. American Surety Co., supra), and liability on that ground might be asserted. In these circumstances there is a real threat of liability, and it was to meet such a situation that the interpleader statutes were adopted. * * *"

The insurer should not be compelled to separate out conflicting local policies and expose itself to the risk of multiple liability to its insured or the claimants through the conflicting demands of several states. The stake-

holder, as well as the claimants, is entitled to the protection of diversity jurisdiction when the actual adversity over the fund is among claimants whose only common interest lies in breaking the policy limits against an out-of-state insurer.[47]

**d. The courts**

The courts are also interested in sustaining interpleader jurisdiction of this class of case. While the desirability of consolidating related claims is not unique to interpleader, interpleader is unquestionably consistent with judicial needs in cases where there is a limited fund to which many persons look for compensation for claims growing out of a single occurrence. Where the claimants are citizens of several states, other devices have consistently proved inadequate, primarily because jurisdictional limitations require an unrealistic measure of cooperation among all of the contending parties.[48] Consolidating 35 personal injury trials in a single proceeding necessarily creates substantial savings of judicial time and public expense and avoids the serious risk of contradictory answers to the same question as to persons similarly situated. The use of interpleader for the consolidation and trial of claims against a limited

47. See Chafee, *Interpleader in the United States Courts*, 41 Yale L J 1134 at 1136 (1932).

48. Comment: *Procedural Devices for Simplifying Litigation Stemming from a Mass Tort*, 63 Yale L J 493 (1954); see *Pennsylvania R. Co. v. United States*, (DC NJ 1953) 111 F Supp 80.

fund arising out of mass torts promotes important goals of judicial administration, goals which have been freely implemented throughout the Federal Rules (supra 18, fn 25).

The ultimate justification for sustaining the interpleader jurisdiction of federal courts in these cases lies in the fact that they involve the competing claims of citizens of several states which in every real sense lie against a fund as to which their rights should be evenly and fairly determined, and that the absence of interpleader exposes the insurer to multiple litigation and the risk of multiple liability.[49] From the standpoint of all of the parties—the claimants, the insured, the insurer and the courts—interpleader is not merely useful; it is indispensable for the protection of their rights and the distribution of the fund in a fair and orderly manner. A failure to grant that protection for lack of a direct action statute disregards the realities of the situation in favor of an irrelevancy.

> "* * * It is true that the victims technically have no cause of action against the insurance company until judgment, and only against the assured till then; but substantially they are all seeking the

49. Professor Wechsler, no friend of diversity jurisdiction, has recognized the justification for interstate interpleader:

> "To do so is to premise federal intervention on a current finding of state inadequacy. The problem is to limit intervention to the situations where it is in fact responsive to such need." Wechsler, *Federal Jurisdiction and the Revision of the Judicial Code*, 13 Law and Cont Prob 216 at 239-240 (1948).

insurance money from the start. The company's obligation to defend and its limited duty to pay give it a vital interest in every tort action. It is no interloper in asking a unification of the numerous tort actions brought against the assured. Its request benefits the claimants as well as itself. Instead of a haphazard looting of the fund by the first comers, a bill in the nature of interpleader filed before numerous judgments have ripened assures a fair share of the insurance money to each victim and conforms to the principle, 'Equity is equality.' "[50]

## V.

**The recognition of interpleader jurisdiction in this case does not invade any interest of the tort claimants.**

It is sometimes asserted that the recognition of interpleader jurisdiction over unliquidated tort claims will deprive tort claimants of their right to a jury trial of their damage actions against the insured and of their "right" to choose the forum. The first is wholly wrong, and the second largely so; it is strongly overbalanced by the substantial benefits to all parties and the courts which will flow from permitting such actions.

### a. Right to jury trial

In *Liberty Oil Co. v. Condon Bank*, (1922) 260 US 235 at 244 the Court stated that an interpleader action

50. Chafee: *The Federal Interpleader Act of 1936: II*, 46 Yale L J 1161 at 1166 (1936). Accord: Keeton, *Preferential Settlement of Liability-Insurance Claims*, 70 Harv L Rev 27 at 41-44 (1956).

is equitable in nature, and there is consequently no right to a jury trial at either stage of the proceeding.[51]

*Liberty Oil* has been undermined, however, by the statutory extension of interpleader to controversies which were not within the interpleader jurisdiction of equity courts and by the recognition, since the union of law and equity and adoption of the Federal Rules has permitted the joinder of legal and equitable issues in a single proceeding, that the nature of the issues controls the right to jury trial, not a historical classification of the entire proceeding.[52] Consequently, the clear weight of professional and judicial opinion supports the right to a jury trial of legal issues arising during the

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51. The Court's statement was dictum on the facts of the case. However, the suggestion has been followed by some of the lower courts and is both supported and contradicted by Professor Moore.

*Liberty Nat. Life Ins. Co. v. Brown*, (DC MD Ala 1954) 119 F Supp 920 at 921-922

*Edward B. Marks Music Corporation v. Wonnell et al*, (DC SD NY 1944) 4 FRD 146

*Bynum v. Prudential Life Ins. Co. of America*, (DC ED SC 1947) 7 FRD 585 at 587

*Pennsylvania Fire Ins. Co. v. American Airlines, Inc.*, supra, (DC ED NY 1960) 180 F Supp 239 at 242

cf 5 Moore's Federal Practice (2d Ed 1964) 302-303 (¶ 38.38 (1)) with 3 Id 3013 (¶ 22.04(3))

Several years before *Liberty Oil* was decided, Judge Hand took a contrary position. *Sherman Nat. Bank v. Schubert Theatrical Co.*, (DC SD NY 1916) 238 Fed 225 at 230-231.

52. The latter analysis has received strong support since *Beacon Theatres v. Westover*, (1959) 359 US 500 at 509-510. See also *Dairy Queen v. Wood*, (1962) 369 US 469 at 472-473.

second stage of interpleader actions.[53] Whether the trial of tort claims in the second stage is regarded as a historical law action which retains its form when included in a modern interpleader action, or whether the tort claim is treated as an essentially legal issue, the result is the same—the claimants will have a jury trial of their claims.

The point is illustrated by *DePinto v. Provident Security Life Insurance Company*, (CA 9 1963) 323 F2d 826, at 834-837, cert den (1964) 376 US 950, reh den (1966) 383 US 973, a stockholders' derivative action which the court recognized was essentially an equitable proceeding. The court held, however, that the underlying legal claims of the corporation against its officers and directors must be tried by a jury, and it refused to allow the historic characterization of the action to limit or control the right to a jury trial.[54]

Barron and Holtzoff conclude:

"Viewed in this perspective, the fact that the procedural device known as interpleader was historic-

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53. CASES: *Pan American Fire & Casualty Company v. Revere*, supra, (DC ED La 1960) 188 F Supp 474 at 483; *John Hancock Mut. Life Ins. Co. v. Yarrow*, (DC ED Pa 1951) 96 F Supp 185 at 187-188; *John Hancock Mut. Life Ins. Co. v. Kegan*, supra, (DC Md 1938) 22 F Supp 326 at 331; *Savannah Bank & Trust Company of Savannah v. Block*, (DC SD Ga 1959) 175 F Supp 798 at 801.

OTHER AUTHORITIES: Harrington, *Jury Trial In Interpleader*, 39 Tex L Rev 632 (1961); Note, 54 Mich L Rev 1171 (1956); Note, 17 Okla L Rev 79 (1964); Note, 1956 Wash U L Rev 264; Wright, Minnesota Rules 135-136 (1954).

54. This solution has been suggested in *Fanchon & Marco, Inc. v. Paramount Pictures*, (CA 2 1953) 202 F2d 731 at 735; see also *Ramsburg v. American Investment Company of Illinois*, (CA 7 1956) 231 F2d 333. The applicability of this analysis to interpleader cases is suggested in *Multiparty Litigation in the Federal Courts*, 71 Harv L Rev 874 at 988 (1958).

under the Act when claims are joined over state lines.

Recognition of interpleader jurisdiction in these cases will only infrequently cause measurable inconvenience to the tort claimants. The practical alternative which faces most of them is an empty triumph in a local court. The reality of the claimants' essentially adverse claims to the proceeds of the policy—as well as the needs of the insurer—justifies recognition of interpleader jurisdiction and any limitations upon traditional choice-of-forum principles which may result.

## VI.

### The trial court had jurisdiction to enjoin proceedings against State Farm and its insured in any other court.

The injunction against prosecuting claims against State Farm or its insured in any other court was expressly authorized by 28 USC § 2361 of the Interpleader Act, infra 44, and it is clear that in the absence of an injunction many of the most important benefits of interpleader relief are lost.[59] The statutory authority to en-

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59. "* * * Except where claimants are willing to await the determination of their rights in an interpleader action, such an action loses a good deal of its effectiveness unless the interpleader court can enjoin them from instituting or continuing proceedings, in all courts, state and federal. * * *" 3 Moore's Federal Practice (2d Ed 1964) 3011 (¶ 22.04)

"* * * an interpleader suit will not give complete relief to the stakeholder unless the entire controversy can be settled in the interpleader proceeding. * * * without these injunctions, the relief would lose a large part of its value. * * *" Chafee: *Interpleader in the United States Courts*, 41 Yale L J 1134 at 1136 (1932)

join such proceedings is comprehensive; Congress did not contemplate an ineffective interpleader remedy.

The weight of authority also supports the view that an injunction is available in a proceeding under Rule 22, despite the limitations on injunctions against state court proceedings contained in 28 USC § 2283.[60] In *Pan American Fire & Casualty Company v. Revere*, supra, (DC ED La 1960) 188 F Supp 474 at 485, Judge Wright reviewed the authorities and concluded:

> "* * * [E]very indication is that, regardless of the Interpleader Act, the power of a federal court to enjoin pending state court proceedings in a case like this one will be sustained. Certainly that result is desirable, if not indispensable. If the court had no power to enjoin concurrent state court proceedings, the grant of interpleader would often create more problems that it solved."[61]

Professor Chafee, writing before the expansion of jury practice under the Federal Rules, suggested that the law actions of tort claimants interpleaded by an insurer should proceed independently of the interpleader action in order to protect their right to a jury trial. The interpleader injunction, under this view, would be

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60. 28 USC § 2283:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

61. See also 3 Moore's Federal Practice (2d Ed 1964) 3010-3012 (¶ 22.04).

limited to protecting the fund against the judgments.[62] If petitioners correctly contend that jury trial of tort claims is now available in federal interpleader actions, this basis for limiting the power of the courts to enjoin other proceedings no longer exists.

On the other hand, there are basic reasons for not limiting the scope of the injunction. If it is, important benefits of interpleader practice would be wholly lost, and, as Judge Wright noted, "* * * the grant of interpleader would often create more problems than it solved."[63] The insurer would be faced with the same multiple litigation which it sought to avoid. Unforeseen problems in protecting the rights of the parties would result, for a limited injunction would not protect the insured against execution on judgments entered in other courts, and he would be deprived of his contract right to indemnity by the insurer up to the policy limits. Finally, as we have pointed out, supra 26-27, the claims should (but would not) be determined in one proceeding so that their relationship with each other as against the fund can be determined in a single proceeding.

A remedy which does not relieve the parties from the burden of multiple litigation, which exposes the

62. Chafee: *Federal Interpleader Since the Act of 1936*, 49 Yale L J 377 at 420-421 (1940). This practice was followed in *Aleck v. Jackson*, (1892) 49 NJ Eq 507, 23 Atl 760 and more recently in *Fireman's Fund Ins. Co. v. Irwin*, (DC ND Ga 1948) 82 F Supp 180 at 182.

63. *Pan American Fire & Casualty Company v. Revere*, supra, (DC ED La 1960) 188 F Supp 474 at 485.

insured to execution before the policy proceeds are exhausted, and which results in local judgments obtained under varying rules and standards would be a small improvement over the situation created by the judgment of the court below. It would operate unevenly and unfairly and would not effectuate the policies of interpleader practice.

> "The Federal Interpleader Statute and Rule 22, Federal Rules of Civil Procedure, were not designed merely to prevent a multiplicity of suits and to protect the stakeholder from multiple liability, but they were also intended to require all interested parties to come in and set up their claims in one case, so as to prevent it from being only a race to the swift, where a creditor who had a large claim and the means by which to prosecute it might promptly secure judgment against the stakeholder in another state, and by a prior execution consume the entire amount of the bond, to the exclusion and detriment of creditors having small claims or inadequate means by which to collect them. * * *"[64]

It is not surprising that courts recognizing jurisdiction in this class of case have rejected the suggested limitation.[65]

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64. *Maryland Casualty Co. v. Glassell-Taylor & Robinson*, supra, (CCA 5 1946) 156 F2d 519 at 523. In *Treinies v. Sunshine Min. Co.*, (1939) 308 US 66 at 74 this Court recognized the need for authority to enjoin other proceedings.

65. *Pan American Fire & Casualty Company v. Revere*, supra, (DC ED La 1960) 188 F Supp 474 at 483-485; *Commercial Union Insurance Co. of New York v. Adams*, supra, (DC SD Ind 1964) 231 F.Supp 860 at 867-868.

## CONCLUSION

The judgment of the Court of Appeals should be reversed; this Court should determine that the District Court had jurisdiction over the subject matter of the action, and the case should be remanded to the Court of Appeals for determination of the question of personal jurisdiction which was the subject of the appeal from the District Court. *Polizzi v. Cowles Magazines*, (1953) 345 US 663 at 667.

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